

EXHIBIT 5

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARVEL WORLDWIDE, INC.,)
MARVEL CHARACTERS, INC. and)
MVL RIGHTS, LLC,)

PLAINTIFFS,)

vs.) No. 10-141-CMKF

LISA R. KIRBY, BARBARA J. KIRBY,)
NEAL L. KIRBY and SUSAN N. KIRBY,)

DEFENDANTS.)

VIDEOTAPED DEPOSITION OF NEAL KIRBY
Los Angeles, California
Wednesday, June 30, 2010

Reported by:

SUSAN A. SULLIVAN, CSR #3522, RPR, CRR

JOB NO. 31595

1 A That's correct.

2 Q Would you state their full names and birth
3 dates for me if you can.

4 A My oldest sister is Susan. Her birth date
5 is December 6, 1945. My sister who is slightly
6 younger than me is Barbara. Her birthday is I
7 believe November 26th and I think that -- I think she
8 was born in '53. And my youngest sister is Lisa and
9 I believe her birthday, I'm going with September 6th
10 on this one.

11 Q September 6th?

12 A If I recall right. Well, let's see. She
13 is about 13 years younger than I am so that would
14 be -- she was probably born in '61, I guess.

15 Q Somewhere I had a note that Barbara was
16 born in '52. Is that possible?

17 A It is possible, yes.

18 Q And what is your birth date?

19 A My birthday is May 25th, '48.

20 Q Do you have any children?

21 A Yes, I do.

22 Q How many?

23 A I have two children by my first marriage
24 and one with my current wife.

25 Q And would you just give me the names of

1 MR. TOBEROFF: Let's take a short break.

2 MR. FLEISCHER: Let's go off the record.

3 THE VIDEOGRAPHER: This marks the end of
4 DVD Number 1. Off video at 11:42 a.m.

5 (Recess)

6 THE VIDEOGRAPHER: Back on video at 11:51
7 a.m. This marks the beginning of DVD Number 2
8 of the video deposition of Neal Kirby.

9 BY MR. FLEISCHER:

10 Q Mr. Kirby, have you ever discussed the
11 termination notices which are the subject of this
12 lawsuit with Mr. Evanier?

13 A No, not with Mr. Evanier.

14 Q Have you ever discussed the termination
15 notices with anyone other than Mr. Toberoff or a
16 member of his law firm?

17 A Not that I can recall, no.

18 Q Did you ever attend any meetings between
19 Mr. -- you are Mr. Kirby -- between Jack Kirby and
20 anyone at Marvel at the time Mr. Kirby was working
21 for Marvel?

22 A No, I was not -- if I went into the office,
23 I wasn't party to any meeting.

24 Q I'm sorry, you said you went with him to
25 the office but you didn't attend any meetings?

1 A Yes, as a child, as a kid occasionally my
2 parents were nice enough to let me play hooky once in
3 awhile and I would go sit in with my father if he had
4 to go and bring in artwork and go up to Marvel's
5 office and just kind of sit and wait for him; a
6 little bit later go to the zoo or something.

7 Q Did you have an understanding at that time
8 about who your father was meeting with when he went
9 to the offices of Marvel?

10 A I would just assume he would be meeting
11 with Stan Lee or some other person in charge, I
12 guess.

13 Q Do you have any recollection of discussing
14 with your father any of the meetings he had had with
15 Stan Lee?

16 A No, I don't.

17 Q Was it your father's practice to talk with
18 you about the subject of those meetings or not?

19 A No, not really. I don't recall right now.

20 Q Did you have an understanding of the
21 purpose of the meetings your father was having with
22 Mr. Lee or anyone else who might have been behind
23 that closed door?

24 A Well, I suppose you might say as a kid it
25 was my understanding he was bringing his artwork to

1 New York, gave it to them; they looked at it, they
2 bought it or didn't and on he went.

3 Q Did you have any understanding at the time
4 that part of the function of the meetings was to
5 discuss future assignments or work?

6 MR. TOBEROFF: Assumes facts.

7 A No, I didn't.

8 Q Am I correct then that you have no
9 knowledge whatsoever of any discussions between your
10 father and Stan Lee concerning your father's work for
11 Marvel?

12 A I was never a party to any discussion.

13 Q Did your father ever tell you anything Mr.
14 Lee had said to him?

15 A He never -- I don't recall. I don't recall
16 anything specific where my father said something like
17 Stan said this or anything, no.

18 Q Do you have any recollection of your father
19 bringing in artwork that Marvel did not pay for?

20 A Yes, I do because, I know from time to time
21 it was kind of a topic of discussion at the dinner
22 table where my father would be upset, he might have
23 brought in some pages and whatever might have been
24 something that they didn't like with the pages and
25 they had to redo them and I would know he and my

1 don't recollect specifically, only that it was at
2 dinner so I would assume that Susan and Barbara might
3 have been there.

4 Q Are there any documents or drawings or
5 articles that you could refer to to refresh your
6 recollection of which you are aware about the
7 specifics of the discussions that you were privy to
8 between your mother and father?

9 A I'm not aware of any, no.

10 Q Did you have an understanding one way or
11 another as to whether the work your father presented
12 to Marvel was being done as a result of a request by
13 Marvel that your father do the work?

14 A I don't recall as a child, you know,
15 knowing that, knowing the circumstances under which
16 he did the work, only that he did do the work and
17 occasionally brought into New York City. Like I
18 said, it was my understanding at the time, he would
19 bring it in, they would look at it, they would buy it
20 or they didn't.

21 Q Apart from this one Thor drawing, can you
22 recall any instance that you witnessed that your
23 father brought in work that he did not -- that he
24 returned home with?

25 A Not when I was with him, no.

1 co-created for other publishers.

2 A I believe characters such as Fighting
3 American, there were some horror comics that he did,
4 Black Magic and Young Romance during the late
5 forties, early fifties, some -- honestly I don't know
6 if it was the Marvel or pre-Marvel entity in terms of
7 the characters but Challengers of the Unknown, The
8 Fly which he did with Joe Simon. Oh, I'm sorry, am I
9 not -- I'm moving out of the way there.

10 He did, let's see, Ant-Man.

11 Q Ant-Man, did you say?

12 A I believe it was called Ant-Man, yes.

13 Q A-n-t?

14 A A-n-t, yes.

15 Q Do you know whether Ant-Man was published
16 by Marvel?

17 A No, I don't. I don't know who the
18 publisher is.

19 Q Okay. Any others come to mind?

20 A Not that I -- I'm sure that there are many
21 more. I can't recall any at this particular moment.

22 Q Do you have any firsthand knowledge of your
23 father working on any character or story which is the
24 subject of one of the termination notices here before
25 being asked by Stan Lee or someone else at Marvel to

1 Q But my question is do you know whether any
2 of those characters was created -- do you have
3 knowledge one way or the other as to whether those
4 characters were created pursuant to specific
5 assignments or commissions by Marvel?

6 A No, I don't.

7 Q Forgive me if I've asked this before, it is
8 not my intention to repeat questions, but did your
9 father ever discuss with you or in your presence any
10 assignments he had received from Marvel or Stan Lee?

11 MR. TOBEROFF: Assumes facts not in
12 evidence.

13 A Not that I can recollect right now.

14 Q Do you know how your father was paid for
15 the work he did and was published by Marvel?

16 A Well, like I said previously, he would
17 bring the work when I was there, anyway, he would
18 bring the work to New York, bring in the pages, and I
19 believe he got paid by check in the mail.

20 Q Do you know the basis for the payments that
21 he received for the work?

22 A He got paid by the page that they bought.

23 Q And was that something that you knew at the
24 time or something that you have learned since?

25 A No, I knew that at the time.

1 Q Did you have an understanding at the time
2 that that was consistent with the way other comic
3 book artists were paid?

4 A Yes, I did.

5 Q And how did you come by that understanding?

6 A In just by kind of, you know, discussion.
7 I could not tell you the specific time or instance
8 but I know from time to time, you know, he said
9 that's how he got paid, by the page.

10 Q Did you have an understanding at the time
11 how much he was being paid by the page?

12 A No, I didn't.

13 Q Did he ever discuss financial matters in
14 your presence?

15 A No.

16 MR. TOBEROFF: Excuse me. Give me time to
17 object to the question before you answer.

18 THE WITNESS: Sorry.

19 MR. TOBEROFF: Vague and ambiguous as to
20 "financial matters."

21 A If you are referring to how much he got
22 paid, no.

23 Q Did he ever discuss how much he got paid in
24 relation to other comic book artists?

25 A No.

1 in front of me, if that's what you are referring to.

2 Q You indicated that you weren't privy to the
3 conversations that occurred between your father and
4 Stan Lee or others at Marvel even when you were at
5 the offices.

6 A That's correct.

7 Q But when he came home or when he left the
8 Marvel office and you were together did he ever
9 indicate that he had been asked to make changes in
10 pages?

11 A I don't recall him like at any particular
12 time when I was watching him draw, I don't recall him
13 at any particular time going, "Oh, I need to make
14 this change because they asked me to," no.

15 Q Is it possible that your father had
16 delivered work to Marvel and was asked to make
17 changes and, in fact, took the work home and did make
18 changes and resubmitted it?

19 MR. TOBEROFF: Calls for speculation.

20 A I would have no way of knowing that.

21 MR. FLEISCHER: Marc, your objections are
22 speaking objections and I have not taken issue
23 with it but the objection that you are supposed
24 to make is objection to form. You are not
25 supposed to say assumes facts, you are not

1 A Yes. Because he had either created or
2 co-created most of their characters, if not all of
3 their characters during that timeframe. If it wasn't
4 for him the company might have and probably would
5 have gone down the tubes. And he put all of his
6 heart and work and effort, even 16, hours a day, I
7 remember that, doing all this work and got paid by
8 the page and Marvel and other people at Marvel got
9 very wealthy.

10 Q Was she referring to anyone in particular
11 when she said Marvel and other people at Marvel got
12 wealthy?

13 A Well, in particular Stan Lee and, you know,
14 Marvel as a corporate entity, yes. And I should say,
15 I would like to say it wasn't so much the matter of
16 the wealth, that was probably a poor choice of words
17 on my part. I think the genuine really cause for her
18 upset is that he never really got due credit for what
19 he did.

20 Q Did she ever indicate to you that he had
21 been treated differently than other talented comic
22 book creators during the time that he was working for
23 Marvel and other publishers?

24 A Treated differently in what respect?

25 Q Either in terms of payment or credit or any

1 other aspect of the work.

2 MR. TOBEROFF: Compound.

3 A I don't recall ever discussing with my
4 mother how much my father was paid by the page in
5 relation to any other artist, no.

6 Q Did you have an understanding that your
7 father -- withdrawn.

8 Did you have an understanding that other
9 comic book artists were paid by the page during the
10 time that your father worked in the industry?

11 A Yes. I guess it was you might say common
12 knowledge that that's how comic book artists were
13 paid.

14 Q And was it your understanding that the
15 writers of comic books were also paid by the page?

16 A That I had no knowledge of.

17 Q Do you recall ever having a discussion with
18 your father with respect to the contribution, if any,
19 that Stan Lee or other writers at Marvel had to the
20 stories that he was working on?

21 A I know my father was -- there were times
22 when he was visibly upset if Stan Lee, say, would
23 take credit for something my father was done or
24 didn't get due credit for something that my father
25 had done.

1 the course of, I don't know from, maybe when I was
2 eight years old onward, maybe even younger, up until
3 I left for college it was kind of my daily habit. I
4 would come home from school, go downstairs, you know,
5 say hi to my father, see what he was working on, you
6 know. He would kind of tell me what he was drawing,
7 what he was doing.

8 I would go upstairs, get a snack, get my
9 books and I would go back down in the basement to do
10 my homework because I kind of liked being in
11 proximity. And I was doing homework, go into the
12 studio and watch, go back out and do homework. And
13 eventually we would get my homework done and we would
14 watch T.V. together. At least I watched T.V. while
15 he worked.

16 Q Now did your father ever discuss with you
17 any deadlines he had in connection with the work that
18 he was doing for Marvel?

19 A He would occasionally say that, you know,
20 that he had to get a certain story in by a certain
21 day or something to that effect.

22 Q And I think you said that at certain points
23 in time your father often worked into the -- worked
24 16- to 18-hour days.

25 A Yes.

1 Q If I recall your testimony earlier.

2 A Uh-huh.

3 Q Do you know why he worked those long hours?

4 A He worked those long hours because he was
5 getting paid by the page. The more pages he could
6 do, the more money he earned.

7 Q Do you recall whether those hours had
8 anything to do with his effort to meet specific
9 deadlines?

10 A Specifically, I couldn't say. Those long
11 hours were consistent over the years. It wasn't like
12 a deadline coming up, I'm going to work long hours.
13 Those were his consistent hours.

14 Q Would you say those were his consistent
15 hours between 1958 and 1963?

16 A I would say at least in the period of my
17 good memory, if you wanted to do that, at least in
18 the -- through, say, early sixties through when I
19 went off to college, yes.

20 Q Just to set the context for how old you
21 were at the time, in 1958 you would have been 10,
22 correct?

23 A 10, yes.

24 Q And when would you put the point at which
25 your recollection is its best with regard to the

1 events concerning your father's work?

2 A Probably from that point to when I went,
3 left for college in September of '66, and my
4 recollection during those years was that he always
5 kept very long work hours. He would start working
6 around lunchtime usually and would work until usually
7 3:00 or 4:00 in the morning. Sometimes -- sometimes
8 he had to start earlier and sometimes he would go
9 later. But always put in a lot of hours, usually
10 six, seven days a week. There wasn't any weekend he
11 didn't work.

12 Q Did you have any sense at the time, at any
13 point between the time that you were 10 and you went
14 off to college as to where in the spectrum of comic
15 book artists' compensation your father stood?

16 A At that time, no.

17 Q Did you later come to have an understanding
18 about where he stood in the spectrum from low to high
19 of compensation during those years?

20 A I never had an understanding or I never
21 knew where he stood let's say in relation to a
22 specific artist and I never knew exactly how much he
23 got paid for, you know, per page. I mean, however,
24 obviously I -- they had a house and we all ate every
25 day so I assume he made enough money.

1 your father confided work-related issues in the
2 fifties or sixties at any time?

3 A No, I'm not aware of any. There might have
4 been but not that I can recall.

5 Q You were never present at a conversation
6 where you heard your father discussing work issues
7 with another non-family member; is that correct?

8 A Correct. That would be correct.

9 Q I want to go through a few specifics with
10 regard to some of the characters that are the subject
11 of the termination notices at issue in this and let
12 me start with Spider-Man.

13 Do you have any information with regard to
14 the circumstances under which the Spider-Man
15 character was created?

16 A I'm not -- I'm not aware of any specific
17 information as to the creation of Spider-Man.

18 Q Do you know if your father created the
19 Spider-Man character or co-created the Spider-Man
20 character?

21 A I'm aware that he had a hand in the
22 beginnings of the character and in the design of the
23 character. You know, again, as to meetings that
24 might have taken place, I wouldn't have been privy to
25 that.

1 Spider-Man was created with your sister Lisa?

2 A No, I haven't, that I can recall.

3 Q How about with Barbara or Susan?

4 A No, I don't recall discussing that with
5 them.

6 Q Do you have any specific information with
7 regard to your father's contribution, if any, to the
8 actual creation of the character other than penciling
9 the cover for the first issue?

10 A That's -- he may have done more. I don't
11 have, that I can recall, any other specific
12 information.

13 Q Were you ever told by your father that he
14 had been assigned to draw the first Spider-Man and
15 that his style of drawing was ultimately determined
16 by Stan Lee to be too heroic for the character?

17 MR. TOBEROFF: Compound.

18 A If I recall at the time Spider-Man was
19 being created and the script started, I know he did
20 mention that because of all the other strips that he
21 was doing, FF and Thor and so on, that he was too
22 busy to do Spider-Man.

23 Q And did he tell you that at the time?

24 A I believe it did come up. Again, I
25 couldn't recall a specific date or time or how the

1 he would get upset when Spider-Man was brought up, so
2 to speak, you know, that, again, he and others
3 involved basically didn't get any credit.

4 Q Of your own firsthand knowledge do you know
5 whether the concept for the Spider-Man character and
6 the basic powers of a Spider-Man character were
7 conceptualized initially by Stan Lee or someone else?

8 A Well, I would say my firsthand knowledge,
9 my first guess would be my father just because of
10 his -- just his knowledge of science, his use of
11 science fiction in stories, just in his if you want
12 to call it pattern, for lack of a better word, of how
13 do you get a human to have super powers, you know,
14 without direct intervention from God. Well, the best
15 way to do it was somehow altering DNA which was the
16 big thing at the time with the Cold War going on and
17 so on.

18 Q Now is it true that what you just described
19 is your own speculation and, in fact, is not based on
20 your knowledge of how the idea was first floated?

21 A Well, I'd say it is based on my knowledge
22 of how my father worked and his knowledge and in my
23 personal discussions with him at the time I certainly
24 felt that way.

25 Q Well, leaving aside how you felt, can you

1 testify as a matter of fact that Stan Lee didn't come
2 to your father initially with the idea of the
3 Spider-Man character?

4 A Well, I can't -- I can't say what might or
5 might not have been discussed between my father and
6 Stan Lee or Stan Lee and anybody else given that I
7 was a teenager and not privy to those discussions.

8 MR. FLEISCHER: Would you mark this as
9 Kirby 2.

10 MR. TOBEROFF: Thank you.

11 (Neal Kirby Exhibit 2, a document, marked
12 for identification, as of this date.)

13 Q Mr. Kirby, I place before you an article
14 marked for identification as Neal Kirby Exhibit 2.

15 A Uh-huh.

16 Q Have you ever seen the story reflected in
17 this exhibit?

18 A I will let you know as soon as I read it.

19 MR. TOBEROFF: It is hard to tell looking
20 at the exhibit what it is. Can you tell me what
21 this is? Or I should say this looks like a blog
22 entry.

23 MR. FLEISCHER: Apart from what it appears
24 to be on the face of it, I can't offer you any
25 information about it.

1 Q Have you ever seen the interview your
2 father appears to have given to The Spirit creator
3 Will Eisner concerning the Spider-Man character?

4 MR. TOBEROFF: Assumes facts not in
5 evidence.

6 A No, I haven't seen that interview.

7 Q What information, if any, Mr. Kirby, do you
8 have concerning the circumstances of the creation of
9 the Iron Man character?

10 A I'm trying to recall. At this time I don't
11 have any recollection of Iron Man specifically, how
12 that came about.

13 Q Do you know what contribution, if any, your
14 father made to the Iron Man character?

15 A Again, I believe at the very least, I
16 believe he designed the costume. As to the initial
17 idea and creation of the character, I'm sure at the
18 very least he probably contributed to that.

19 Q Is that just sheer speculation on your
20 part?

21 A Well, I wouldn't call it speculation, I
22 would call it based on -- based on the knowledge of
23 that he pretty much had a hand in everything Marvel
24 did and based on my knowledge of his creativity.

25 Q Well, was he the artist assigned to draw

1 the initial issue of Iron Man?

2 A That I do not know.

3 Q Do you have any basis to contradict Mr.
4 Lee's testimony that the concept for the Iron Man
5 character was his?

6 A Do I have any basis for that? I have the
7 basis that I know my father's creativity versus Mr.
8 Lee's creativity and Mr. Lee was an excellent
9 marketer, he was an excellent manager, excellent
10 self-promoter. I honestly don't believe he had any
11 creative ability.

12 Q You've never met Mr. Lee, have you?

13 A When I was younger, yes, I met him several
14 times.

15 Q And is it on the basis of your assessment
16 of him as a teenager that you make that statement
17 that he wasn't creative?

18 A It is on that basis. It is on the basis
19 of, you know, having seen and read some of his
20 interviews and so on.

21 Q Am I correct that you have no firsthand
22 knowledge about whose idea the Iron Man character
23 was; is that correct?

24 A I cannot recall at this moment.

25 Q Do you recall being aware that Don Hecht

1 was the artist who drew the first issue of Iron Man?

2 A He may have been. You know, I'm not aware
3 of who drew the first issue.

4 Q Do you know whether the cover for the Iron
5 Man book that your father did was created before or
6 after the panels for the first publication were
7 created?

8 A I don't have any recollection of that.

9 Q Are you saying -- when you say you don't
10 have any recollection, do you believe at one point
11 you knew and have forgotten or are you saying that
12 you never knew?

13 A No, I'm saying that I don't remember. I
14 may have at one point in the past. Right at this
15 moment I don't recall.

16 Q Is there anything of which you are aware
17 that would refresh your recollection about that
18 subject?

19 A Well, I don't know. I suppose we can get a
20 Psychology 101 book and get out all the standard
21 memory refreshers. But it is possible something
22 could pop up in the future that might refresh my
23 memory, I don't know.

24 Q You are not aware of any document or
25 drawing or anything that currently exists of which

1 you are aware that could refresh your recollection;
2 is that correct?

3 A I have not seen anything recently that I
4 would say would, can refresh my memory.

5 MR. TOBEROFF: Before you go on to a new
6 character, there was a name you mentioned in
7 connection with Exhibit 2 and I just wanted
8 to -- rather than having her go back to the
9 record can you tell me that name.

10 MR. FLEISCHER: Will Eisner?

11 MR. TOBEROFF: No, the person who --

12 MR. FLEISCHER: Al Nickerson?

13 MR. TOBEROFF: Yeah.

14 MR. FLEISCHER: It is in the article
15 itself.

16 THE VIDEOGRAPHER: We have to change tapes
17 in about five minutes.

18 MR. TOBEROFF: I'm sorry, I didn't see it.

19 Q Mr. Kirby, a minute ago you said something
20 to the effect that your father had a hand in
21 everything that Marvel did. During what period of
22 time were you referring?

23 A Referring to the time late fifties to early
24 sixties.

25 Q And how do you know for a fact that that

1 was the case?

2 A Just my, again, my understanding of the
3 way -- the way my father operated and contributed
4 ideas and came up with and created ideas.

5 Q Anything else on which you make that
6 statement?

7 A And, again, based on the fact I don't know
8 what other creative forces at Marvel existed other
9 than my father at that period of time.

10 Q Well, not being aware of what other
11 creative forces existed, how can you make that
12 statement?

13 MR. TOBEROFF: Argumentative.

14 A Again, just my -- just my knowledge and
15 basis of, you know, having been around my father and
16 at the time that the things were, at Marvel things
17 were happening. I don't know another way of wording
18 it.

19 Q Well, you are suggesting that there was no
20 other creative force at Marvel other than your
21 father. Do you have a basis for that understanding?

22 A Well, in terms of -- I think if you look at
23 Marvel after my father left I'm not sure, and, again,
24 I'm not sure that anything new came out of Marvel
25 after he left the company so you could look at it in

1 that aspect.

2 Q Does that as a scientist speak to what
3 happened while your father was there?

4 MR. TOBEROFF: Argumentative.

5 A Well, as a scientist I'm not sure how we
6 apply scientific method to this but, no, it just goes
7 on the basis of what I have known and just my
8 discussions with my father.

9 Q Did your father ever tell you that he was
10 the sole creative force at Marvel during his tenure
11 there?

12 A I don't recall him using -- again, my
13 father would have been too humble a person to even
14 word anything like that but I know in discussions it
15 just, to me, he certainly seemed that way.

16 Q It seemed that way because you were aware
17 of what else was going on at Marvel other than what
18 you saw your father do?

19 A Well, yes. We got all the comic books and
20 pretty much knew what was going on at Marvel at the
21 time as children.

22 Q And was it your view at the time that Mr.
23 Hecht who was a Marvel artist at the time was not a
24 significant creative force at Marvel?

25 A I couldn't say one way or the other. I

1 never met Mr. Hecht.

2 Q Are you aware of the work of Bill Everett?

3 A I know his name.

4 Q Is it your view that Mr. Everett was not a
5 creative force at Marvel in the fifties and sixties?

6 A Again, I never met Mr. Everett and I'm not
7 totally familiar with his work so I wouldn't
8 conjecture on that one way or the other.

9 Q So my question is how can you say that your
10 father was effectively the sole creative force at
11 Marvel during the fifties or sixties.

12 A Again, that's come just from my discussions
13 with my father and my perception of the situation at
14 the time.

15 Q Do you know who the editor and chief at
16 Marvel was during the fifties and sixties?

17 A I would guess that would have been Stan
18 Lee.

19 Q Do you know if it was part of the work that
20 your father did on Marvel's behalf to review and
21 direct Marvel publications other than the ones that
22 he was working on as an artist?

23 A Are you staying it was Stan Lee's job?

24 Q No, your father's job.

25 A To edit other artists' work? I'm not quite

1 A He never mentioned to me that he worked off
2 a synopsis and usually he was penciling stories in
3 the margins of the comics. He usually, if I could
4 jump in there, he usually started, he always started
5 in the middle of a story and then he went back to the
6 beginning and then he would finish up and do the end,
7 that was just the way he worked. I would think if
8 you are working off a story or a synopsis that you
9 don't need to do that but --

10 Q As you have indicated, though, you don't
11 know what conversations may have occurred between
12 Stan and your father before you saw him working on a
13 drawing, correct?

14 A I wouldn't have been privy to those
15 conversations.

16 Q Right. And you don't know whether or not
17 your father had been given a synopsis or a script
18 before he began working on a particular story; is
19 that correct?

20 MR. TOBEROFF: Asked and answered.

21 A Yes. I never saw a script or synopsis by
22 his drawing board.

23 Q What information, if any, do you have
24 concerning the creation of The Fantastic Four?

25 A In discussions with my father The Fantastic

1 Four basically was a derivative of the, from what he
2 told me, basically he came up with the idea just as a
3 derivative from the Challengers of the Unknown that
4 he had done several years earlier.

5 Q So your father told you that The Fantastic
6 Four was his idea?

7 A Yes.

8 Q Did your father ever tell you about any
9 discussions that he had with Stan Lee concerning The
10 Fantastic Four?

11 A Any specific discussions, not that I can
12 recall.

13 Q Did your father ever discuss with you any
14 synopsis that Stan Lee had given to your father?

15 A No, he never discussed that with me and as
16 I said previously, I never saw him work on a
17 synopsis.

18 (Neal Kirby Exhibit 3, a document, Bates
19 Nos. MARVEL0014587 to MARVEL0014588, marked
20 for identification, as of this date.)

21 MR. FLEISCHER: Would you mark that as
22 three, please.

23 MR. TOBEROFF: I just want to clarify, any
24 document that you produce in this action will
25 have Bates stamps and if it is a document like

1 work on The Fantastic Four?

2 A Again, I can only say what I said before.
3 I had never seen him work from a synopsis, he never
4 had a synopsis or a story on his drawing table or
5 anywhere near his drawing table that I could see when
6 he was working, and in none of our discussions did he
7 ever mention to me working off of any kind of
8 synopsis by Stan Lee.

9 Q Apart from those observations you made as a
10 young man or teenager, do you have any reason to
11 doubt the veracity of Stan Lee's testimony to the
12 effect that this is a synopsis he created and gave to
13 your father for the purposes of assisting his work as
14 the artist on The Fantastic Four?

15 A Do I have reason to disbelieve him?

16 Q Yes.

17 A Yes, I do have reason to disbelieve him.

18 Q And what is the basis for your disbelief?

19 A The basis for my disbelieve is that I
20 believe Stan Lee, and I'm trying not to be
21 mean-spirited here at all or anything like that, who
22 was brought up to be respected by my elders and at my
23 age it is nice to call someone else an elder, but I
24 believe Stan Lee is -- he is basically a self-
25 promoter so I believe, you know, I believe he is

1 narcissistic and I believe he is a self-promoter and
2 I believe he will do whatever needs to be done to
3 carry on the myth that he was the creator of
4 everything at Marvel.

5 Q Did your father ever tell you that he
6 created the names of The Fantastic Four characters?

7 A They came up in discussion, yes, that my
8 father was joining them, this is so is so, this is so
9 and so.

10 Q Do you know if those were the names he gave
11 to the characters or the names that Stan Lee had
12 given to the characters or someone else had given to
13 the characters?

14 MR. TOBEROFF: Compound.

15 A It was my understanding from our discussion
16 that he had given the names to the characters.

17 Q He had told you that he had given the names
18 to The Fantastic Four characters?

19 A I believe so, yes.

20 Q Did he tell you that when the initial issue
21 of Fantastic Four was on the drawing board or some
22 other time?

23 A If I recall, it was -- it was -- I don't
24 recall honestly if it was while he was still drawing
25 it or if it was before the actual published book

1 And then the next opportunity for a war book being
2 the Combat book which was just really a compilation
3 of stories.

4 Q Now do you -- and the basis for your
5 statement that your father created the name Sergeant
6 Fury or Nick Fury, whichever is appropriate --

7 A Sergeant Nick Fury.

8 Q Sergeant Nick Fury is what?

9 A That he told me.

10 Q Any other information concerning the name
11 of that character that you have?

12 A Not that I can recall.

13 Q And am I correct that you have no knowledge
14 with regard to conversations that occurred between
15 your father and Stan Lee concerning Sergeant Nick
16 Fury prior to the introduction of that character? Is
17 that correct?

18 A It is correct in saying that my father
19 didn't -- in my discussions with my father that did
20 not come up.

21 Q And you weren't present at any
22 conversations as you have indicated between your
23 father and Stan Lee.

24 A That would be correct.

25 Q Do you recall who was the assigned writer

1 to the Thor comic book at the time of its first
2 issue?

3 A No, I don't recall that.

4 Q Do you know what contribution the assigned
5 writer of Thor made to that character?

6 A I don't recall right now. No, I don't
7 recall what that might have been.

8 Q Do you recall what discussions took place
9 between Stan Lee and your father prior to your father
10 beginning work on the Thor comic book?

11 A I have no knowledge of what their
12 discussions might have been. Same thing. My
13 discussions with my father were about basically
14 creating, you know, a book around Norse mythology.

15 Q Do you know if Stan Lee asked your father
16 to create a book based on Norse mythology?

17 A I have no recollection or knowledge of
18 that.

19 Q Was it your understanding your father would
20 begin working on a book without any discussion with
21 Stan before doing so?

22 A I would say it was my understanding if my
23 father had an idea for a book or a character to
24 create he could bring it up and get a yea or nay.

25 Q Was it your understanding that he would

1 begin working; that is, drawing panels prior to
2 getting a go ahead from Marvel or Stan Lee?

3 A I don't believe -- that is not my
4 understanding. My father didn't do work on spec, he
5 was getting paid by the page.

6 Q Let's talk about Ant-Man for a minute.

7 A If I could just interject here, if he was
8 to do something on spec like that and do a whole 20-
9 page story which would take him hours and hours and
10 hours to do and bring that into New York and oh,
11 sorry, you know, idea but not now let's wait a couple
12 of years, he doesn't get paid for it so that wouldn't
13 have been the way my father would operate.

14 Q Okay. What information, if any, do you
15 have about the circumstances surrounding the creation
16 of Ant-Man?

17 A I really don't recall that. Ant-Man would
18 have been when I was really young.

19 Q You read, as you said, Mr. Lee's deposition
20 testimony, correct?

21 A Uh-huh.

22 Q And he described the circumstances of his
23 idea about Ant-Man to your father. Do you remember
24 reading that testimony?

25 A Actually, no, I don't. I did read through

1 going on and him explaining the characters. Usually
2 he would say something to the effect of this is a new
3 story I've come up with, what do you think of this
4 and here is where I'm going with this. That's how
5 our discussions would go.

6 Q Specifically with regard to the X-Men did
7 your father say the concept and basic story of the
8 X-Men universe was solely his creation?

9 A I do recall him saying again along those
10 same lines this is the new characters and story, you
11 know, I've come up with.

12 Q You read Mr. Lee's testimony concerning the
13 creation of X-Men, correct?

14 A Yes, I did.

15 Q And Mr. Lee testified under oath that the
16 concept was his and that he assigned the book to your
17 father, correct?

18 A Uh-huh.

19 Q Do you have any reason to believe that that
20 testimony was not correct?

21 A Again, as I stated before, my reasons for
22 not believing Mr. Lee is that, you know, I have no
23 reason not to disbelieve my father and pretty much
24 every reason to disbelieve Mr. Lee. I just don't
25 believe in his deposition he was telling the truth or

1 maybe he just didn't recall the truth properly. I
2 will try to be somewhat respectful.

3 Q Are there -- apart from your own
4 recollections of what your father told you that you
5 have testified about with respect to X-Men, are you
6 aware of any evidence to corroborate your belief that
7 the X-Men story was a creation solely of your
8 father's?

9 A I am not aware if you are referring to like
10 some kind of written evidence or -- I'm not quite
11 sure exactly what you are referring to.

12 Q Any -- any evidence, whether it is written
13 or something you observed.

14 A Well, I observed him drawing X-Men, Number
15 1, and talking -- and talking to the -- talking about
16 the story with me so, again, that's where it is
17 coming from. I have no knowledge, I cannot recall
18 anything about there being any other type of written
19 evidence that might exist.

20 Q Well, if your father had been assigned the
21 story by Mr. Lee who had suggest an outline for the
22 story or a synopsis, whether verbally or in writing,
23 you would have still observed your father drawing the
24 first issue of X-Men, correct?

25 MR. TOBEROFF: Argumentative.

1 Galactus, he is going to be a planet eater, planet
2 destroyer, went into the concept of the Silver Surfer
3 of being his scout or herald, as he called it.

4 Q Did he indicate in front of anyone else
5 that he had created the names Galactus and the Silver
6 Surfer?

7 A He might have.

8 Q Do you have a recollection of him having
9 done so?

10 A I don't recall him saying that in front of
11 me and someone else.

12 Q Are you aware of your father ever giving an
13 interview in which he claimed credit for naming the
14 Silver Surfer?

15 A He may have. Again, I have no recollection
16 of one in specific.

17 Q Are you familiar with a character called
18 Rawhide Kid?

19 A Yes, I am.

20 Q And do you have any information concerning
21 the circumstances under which that character was
22 created?

23 A Rawhide Kid I don't. I don't recall. I
24 believe the Rawhide Kid was one of the first things
25 that he did when he went -- at that time with Marvel.

1 MR. TOBEROFF: You can answer that as long
2 as your answer does not implicate the substance
3 of conversations with me.

4 A My role would have been in helping to
5 identify the characters that I was aware of.

6 Q Rawhide Kid is a character that is the
7 subject of the notice, correct?

8 A I believe recall all 45 them off the top of
9 my head.

10 Q What information did you have about the
11 creation of Rawhide Kid that was pertinent to the
12 notices?

13 A I don't recall at this time.

14 Q The notices pertain to characters that
15 appeared in publications that were made between 1958
16 and 1963, correct?

17 A I believe so.

18 Q And can you tell me what characters which
19 are the subject of those notices you and your sisters
20 contend were created solely by your father as opposed
21 to co-creations?

22 A As opposed to co-creations.

23 MR. TOBEROFF: Calls for a legal
24 conclusion.

25 A You know, again, I could only go on the

1 A No, I don't.

2 Q Do you have any information concerning the
3 circumstances of the creation of The Incredible Hulk?

4 A That honestly I don't recall. I recall my
5 father again working on the first issue and obviously
6 subsequent issues and going over the storyline with
7 me about how he becomes the Hulk and so on, Bruce
8 Banner and all that. I cannot recall right now
9 discussions about creation, creation of that
10 character.

11 Q Are you aware of any documents that would
12 assist you in refreshing your recollection?

13 A No, I'm not aware of anything that I can
14 think of.

15 Q Do you contend that The Incredible Hulk was
16 the sole creation of your father?

17 A Again, my personal knowledge is after it
18 had been released he had a major part in the creation
19 of it.

20 Q Would it be correct to say you don't know
21 one way or the other as to whether there were others
22 who made a significant contribution to The Incredible
23 Hulk?

24 A I would say my personal knowledge is there
25 may have been. I don't know how significant it might

1 have been.

2 Q Did you review Stan Lee's testimony
3 concerning the concept for The Incredible Hulk
4 character?

5 A I did read it. I don't recall all of it.

6 Q Do you have any reason to believe that the
7 idea for the character was not a creation of Stan
8 Lee's?

9 A I could only say, as I said before,
10 according to Stan Lee's deposition he created
11 everything solely. Again, trying to be somewhat
12 respectful, you know, but to say that would seem
13 highly unlikely. You know, honestly I just think Mr.
14 Lee is again propping up his own ego with whatever he
15 sees fit at this point. What's the expression, he
16 has the benefit of being the last man standing, so to
17 speak.

18 Q Do you feel that Mr. Lee's testimony in
19 some way diminished the contribution that your father
20 made to the various characters that he worked on at
21 Marvel?

22 A Diminished I think is -- I think diminished
23 is the least of it. I think Stan Lee is kind of
24 rewriting history but --

25 Q You know, with respect to the creation of a

1 you know, met with somebody else saying gee, I have
2 this good idea for a character, you know, would you
3 like to go for it, that he would have done it, you
4 know. Definitely I would consider that coming up
5 with an idea and speculation. There's no -- there's
6 no guarantee if you are going to come up with an idea
7 that they're going to say yea, nay or otherwise. I'm
8 sorry.

9 MR. TOBEROFF: Feel free to finish your
10 answer.

11 A In terms of would he, maybe this was a
12 little confusing before, what I was trying to get at.

13 In terms of would he sit down and spend
14 three days, four days, however long, actually
15 doing -- I don't recall how long comic books were at
16 the time, I think they were 22 pages, something like
17 that, would he sit down and do a 22-page comic book
18 and then bring that in to -- bring that in to Stan
19 Lee or anyone else and go, "Would you like to buy
20 this," probably not. Because if they said no he is
21 out five days worth of work and all those pages. So
22 in regards to just to clarify my statement as to, you
23 know, as to on spec.

24 Q So if I understand what you are saying, you
25 believe that he never sat down to draw a story until

1 being given an okay by someone on the editorial staff
2 at Marvel?

3 A I'm saying that he wouldn't draw, I don't
4 believe that he would draw a brand new out-of-his-
5 head idea story, actual set it pencil to paper,
6 without knowing in advance that it would be
7 purchased.

8 Q And do you have any information one way or
9 the other as to whether any of the stories that he
10 worked on as an artist for Marvel were the result of
11 the collaboration on the story idea between your
12 father and Stan Lee?

13 A I'm sorry, could you just repeat the
14 question, please?

15 Q Sure.

16 (Record read)

17 A I would have no information that I can
18 think of right now for that.

19 Q Do you believe that Marvel had the right to
20 exercise creative control with respect to the
21 contributions your father submitted to Marvel?

22 MR. TOBEROFF: Calls for a legal
23 conclusion.

24 A It was my understanding that they were
25 purchasing their artwork. As to what legal rights

1 that entitled them to, I don't have the knowledge to
2 answer that question.

3 Q Well, you have indicated that you think
4 that there were pages that your father had brought to
5 Marvel that were rejected.

6 A Correct.

7 Q And I think your testimony was that you
8 don't recall whether there were instances in which
9 your father brought artwork to Marvel and corrections
10 were requested but would you agree that that could
11 have happened?

12 A That corrections --

13 MR. TOBEROFF: Calls for speculation.

14 Q That your father brought in work and then
15 Marvel may have asked that corrections be made or
16 changes be made.

17 A The only thing that I can say, I don't know
18 what Marvel may or may not do or what they may or may
19 not have requested my father to do. I do know that
20 he never mentioned to me in any of our discussions
21 look, I'm making a change on a page because so and so
22 asked me to do so.

23 Q Given your knowledge of the industry as
24 you've suggested you have earlier, isn't it
25 commonplace for art directors and editors to make

1 changes or request changes by artists and writers in
2 connection with the stories?

3 A My limited knowledge of the industry is,
4 you know, that might take place.

5 Might I add something that -- oh, I'm
6 sorry.

7 Q There's no pending question.

8 In Paragraph 10, I will read the first
9 sentence.

10 "Any contributions made by Kirby to the
11 Works were done at the expense of the Marvel
12 Entities."

13 And that allegation, as well as the second
14 sentence that is part of Paragraph 10, is denied.

15 A Uh-huh.

16 Q What is the factual basis for the denial
17 that the contributions made by your father to the
18 comic books he worked on for Marvel were made at
19 Marvel's expense?

20 MR. TOBEROFF: Calls for a legal
21 conclusion.

22 A To the best of my knowledge, as we
23 discussed previously, my parents paid for all their
24 own supplies, obviously his studio was in the house,
25 that was at their expense, and to the best of my

1 knowledge they were not reimbursed for those
2 expenses.

3 Q I thought you testified earlier that you
4 had no knowledge one way or the other as to whether
5 or not they were reimbursed.

6 A I can't recall exactly what I said but,
7 however, there would be -- if my mother or if my
8 parents were getting reimbursed for their expenses
9 there would have been no reason for them to complain
10 about them or to even bring that up since it would be
11 a net wash.

12 Q Do you have an understanding of the
13 earliest date on which any of the 45 termination
14 notices becomes effective?

15 A If I recall right, it is somewhere around
16 2014, I believe, somewhere in that area. I don't
17 recall specifically.

18 Q I think you are correct.

19 A I don't recall which character.

20 Q And in respect to the characters which are
21 the subject of the termination notices, are you aware
22 of any limitations on Marvel's rights to exploit the
23 copyrights associated with those characters prior to
24 the effective date of the termination notices?

25 A I can't say that -- you know, I can't say

1 to be worded, that's not my area of expertise.

2 Q You were willing to suggest that the credit
3 that was given to your father on the Hulk film was
4 inappropriate in some fashion.

5 A Yes. Because I would have preferred the
6 word "created" in it as I mentioned before.

7 Q Are you aware that Wolverine's first
8 appearance was in 1974 well after your father had
9 stopped work on X-Men?

10 MR. TOBEROFF: Assumes facts not in
11 evidence.

12 A No, I was not aware of that. No. I don't
13 recall that.

14 Q Did you do any research to determine
15 whether any of the characters that were the subject
16 of your notices were in fact created by your father
17 or co-created by him?

18 A I did some.

19 Q What research did you do?

20 A Oh, just some with books that I have or a
21 little talking with my sister and so on.

22 Q Which sister?

23 A Lisa.

24 Q And what books?

25 A Oh, just the coffee table history of comic

1 kind of books.

2 Q Can you be more specific? Are these books
3 that you have in your home?

4 A Yes, they are.

5 Q And do you still have them in your home?

6 A I do, yes.

7 Q And do you recall specifically what titles
8 and what authors?

9 A No, I can't at the moment. There's one
10 book by Mark Evanier which I guess is the newest
11 book. I think it is just titled "Jack Kirby, King of
12 Comics," I believe.

13 Q Did you ever inquire of Mr. Evanier as to
14 whether he had any direct knowledge of the
15 circumstances of the creation of the characters that
16 your father drew for Marvel?

17 A No, I haven't had any conversations with
18 Mark Evanier.

19 Q Do you know if Mark Evanier was privy to
20 any of the meetings or discussions at Marvel between
21 your father and Stan Lee?

22 A Mark Evanier, as far as I know, would not
23 have been around at that time.

24 Q Do you know what the basis for Mr.
25 Evanier's statements in the book that you relied on

1 litigation was commenced?

2 A No.

3 I'm mean, I'm sorry, yes, you are correct
4 in that.

5 Q Are you aware of any significance these
6 pages have to the issue of the circumstances of the
7 creation of any of the characters depicted in these
8 pages?

9 A That I honestly cannot say that I'm aware
10 of that.

11 Q Now a lot of the pages have either captions
12 or other handwritten notations other than the ones
13 that appear to be actually printed. Do you see that?

14 A Yes, I do.

15 Q Let's take an example, K 10. Can you
16 identify the handwriting at the foot of the pages
17 saying "Hunters say"?

18 A That would appear to be my father's.

19 Q And do you know what that notation was
20 intended to represent or be?

21 A My father used to add comments in the
22 margins. If sometimes he did not write dialogue
23 directly, from what I understand, he would add those
24 comments to guide the person adding the dialogue in
25 the balloons.

1 Q And do you know if the comments that your
2 father would make in the margins were ever used
3 verbatim in the final version of the story?

4 A That I would really -- I don't know, I
5 couldn't tell you.

6 Q Was it your understanding that those
7 marginal notations that your father put on the
8 drawings were subject to the inclusion or not
9 inclusion at the discretion of the editor or art
10 director?

11 A I couldn't say at the time if I had any
12 knowledge of that, if that was going to happen or
13 not. I do know that, you know, that my father was
14 adding to guide the story and sometimes he would do
15 the work because I know he mentioned the letterer
16 will go over these at a later date, something to that
17 effect.

18 Q The notations that you are talking about
19 were not notations that were intended to be going
20 over by the letterer, were they?

21 A Not the ones in the margins, no.

22 Q Was it your father's custom, do you know,
23 to actually put in captions or balloons on the
24 drawings themselves?

25 A I can't say if he did it every time. I